

# LIABILITY ISSUES

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## **Liability of Governing Board of Trustees**

Governing boards are legally responsible for their decisions and for following applicable state and federal laws as well as their own bylaws. A board can be sued even if the board, its members, or the library staff are non-liable and have conducted themselves in an appropriate manner. Even if a suit is without merit, the library will still incur costs to defend itself against the charges. The library board should consider a continuing education session addressing liability issues. Legal counsel should be consulted for advice as needed.

The following RCW defines liability for boards and library staff. In summary, it sets out that boards are liable for “tortious conduct” which is defined as “...a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction.”

***All local governmental entities, whether acting in a governmental or proprietary capacity, shall be liable for damages arising out of their tortuous conduct, or the tortious conduct of their past or present officers, employees, or volunteers while performing or in good faith purporting to perform their official duties, to the same extent as if they were a private person or corporation. Filing a claim for damages within the time allowed by law shall be a condition precedent to the commencement of any action claiming damages. The laws specifying the content for such claims shall be liberally construed so that substantial compliance therewith will be deemed satisfactory. Revised Code of Washington 4.96.010(1)***

## **Limitations on Individual Trustee Liability**

A general principle is that board members do not have power as individuals. The power of a trustee is derived from the board. If an individual board member is acting in a capacity that has been officially authorized by the board they will normally be protected from personal liability. If, however, such authority was not granted during an official board meeting and the board member takes some unauthorized action, that member may be held legally responsible for the action.

RCW 4.24.264 states that an individual is not liable for making a decision, or failing to make a decision in their official capacity, unless the decision or lack of decision constitutes gross negligence.

## **Violation of Open Public Meeting Laws**

Any trustee who knowingly attends a meeting that is in violation of the open public meetings laws may be subject to personal liability in the form of a civil penalty of one hundred dollars.

## **Protection Against Liability**

Every library board must determine with their legal counsel how they will protect against liability. In municipalities, the city insurance usually covers the board members.

In an effort to emphasize the importance of liability insurance and the importance of legal policy the American Library Trustees Association-Public Library Association Common Concerns Committee adopted a statement on insurance coverage.

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In summary, the statement establishes the responsibility of every library to have insurance coverage and establishes the principle that if a trustee, staff member or volunteer while acting in good faith and within the scope of their duties is involved in a claim that is not covered by insurance, the institution will defend, pay for court costs, or settlement as approved by the board of trustees. The text of statement follows:

It should be considered mandatory that every library have an adequate level of insurance coverage.

If any claim or action not covered by insurance of State Statute is instituted against a trustee, officer, employee, or volunteer of the Library System arising out of an act or omission by a trustee, officer, employee, or volunteer acting in good faith for a purpose considered to be in the best interest of the System; or if any claim or action not covered by insurance of state Statute is instituted against a trustee, officer, employee, or volunteer allegedly arising out of an act or omission occurring within the scope of his/her duties as such a trustee, officer, employee, or volunteer; the System should at the request of the trustee, officer, employee, or volunteer:

- Appear and defend against the claim or action; and
- Pay or indemnify the trustee, officer, employee, or volunteer for a judgment and court costs, based on such claim or action; and
- Pay or indemnify the trustee, officer, employee, or volunteer for a compromise or settlement of such claim or action, providing the settlement is approved by the Board of Trustees.

Decision as to whether the System shall retain its own attorney or reimburse the trustee, officer, employee, or volunteer expenses for their own legal counsel shall rest with the Board of Trustees and shall be determined by the nature of the claim or action.

For the purpose of this article, the term trustee, officer, employee, or volunteer shall include any former trustee, officer, employee, or volunteer of the System.

### **Errors and Omissions Liability Insurance**

Liability insurance for “officers and directors errors and omissions” should cover all key areas where liability may be incurred. These include:

#### Errors in acts

For example, a board exercised its legal authority to purchase land for a new library building, but later it was revealed that the land was contaminated.

#### Acts in excess of the authority

For example, giving a library director an order that conflicts with adopted library policy or procedures.

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### Nonfeasance

(Definition: failure to act, especially failure to do what ought to be done.) For example, a board did not deal with a known conflict of interest when the board discussed and voted to award a contract. Failure to meet contractual obligations.

### Negligence

For example, allowing unsafe buildings or grounds to exist, or failure to properly supervise funds.

### Intentional violations of civil law against a person or their property

These may include: discrimination, infliction of mental distress or outrageous conduct; libel and slander; assault and/or battery; invasion of privacy; negligence; fraud or misrepresentation; wrongful discharge of employee.

### Acts in violation of state, federal, or local statutes or regulations, bylaws of the library

For example, authorizing payment of improper expenses, failure to establish policies that follow pertinent rules in employing personnel, not following legal bid procedures.

## **Managing Liability As A Board Member**

(Adapted from the 1993 *Connecticut Public Library Trustees Handbook*)

There are a few general rules that every board member should follow in order to reduce risk for yourself and the library...

### Pay Attention

The library board's greatest liability risk comes from negligence in doing the job as it is supposed to be done. When members miss meetings, vote on issues without adequate preparation or study, fail to carefully evaluate the financial status of the library or just don't take time to do the job right, they are walking on dangerous ground.

Pay attention to financial reports and the annual audit. Read the minutes of the meetings for accuracy and completeness. Have adequate and correct information and understand the issues before making decisions. Evaluate the director and the progress of the library annually.

Ask trustees to submit their resignation to the appointing authority if an individual trustee does not actively participate in the board, or attend meetings regularly.

### Know Your Board Policies Well and Follow Them

Failure to have a policy when you should have one or failure to abide by the policies you have approved is often a source of litigation.

### Use Common Sense in Taking Action as a Board Member

No one has to tell you that some issues such as potential employment discrimination or manipulating funds are dangerous and will very possibly land you in court. Excuse yourself from discussing or voting on an issue if you have a conflict of interest.

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### Seek Legal Counsel When a Question of Legality Arises

Board members often approve major contracts for the library. It should be standard procedure to have contracts reviewed by an attorney before the board gives approval. If you are unsure of your authority, or interpretation of laws, rules and regulations, consult legal counsel.

### Check Your Board's Directors and Officers (Errors And Omissions) Insurance Policy

Know what it covers and it does not cover. Most homeowner's liability policies do not cover your liability as a board member, so your board should consider additional coverage for the board through the library's insurance package.

### Take Preventive Measures

Request that your library legal counsel discuss liability risks with the full board. Many insurance companies also provide risk management programs for organizations like the library. Ask your insurance carrier to provide such a program for your board.

### Do Only What the Law Says Your Board Can Do

Library boards may not do anything that is not spelled out in law. In addition, be careful to abide by the terms of office specified in state law.

### Ask Your Library Director to Describe How Your Library Assures Compliance With Laws And Library Policies such as:

Open Public Meetings Act

Public records

Sexual harassment policy

Copyright laws

Americans with Disabilities Act

Intellectual freedom

Confidentiality of library records

Family Leave Act

Equal Employment Opportunities

## **RESOURCES**

Municipal Research and Services Center of Washington

<http://www/mrsc.org>

Washington State Attorney General, Open Records and Open Meetings Deskbook

<http://www.wa.gov/ago>